

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JULIO MELECIO,

Plaintiff,

v.

**9:10-CV-289
(FJS/RFT)
LEAD CASE**

BRIAN FISCHER, New York State Commissioner of Corrections; JERRY JANIEC, Inmate Grievance Program Supervisor of Greene Correctional Facility; KATHY APPLE, Business Office Clerk, Greene Correctional Facility; MR. WELHELM, Senior Correctional Counselor, Greene Correctional Facility; MR. KROM, Inmates Account Clerk; MR. DIRIE, Deputy of Security; MICHAEL GRAZIANO, Deputy Superintendent of Administrative Services, Greene Correctional Facility; MARIE HAMMOND, Deputy for Program, Greene Correctional Facility; JEFF MCKOY, Superintendent, Greene Correctional Facility; MR. GLASSER, Sgt. at the S.H.U. 200, Greene Correctional Facility; MR. DOUIGH, Sgt. at the S.H.U. 200, Greene Correctional Facility; MR. S. LUCAS, Correctional Officer, Greene Correctional Facility; MR. WHITEASH, Correctional Officer, Greene Correctional Facility; MR. D. RAMIREZ, Correctional Officer, Greene Correctional Facility; MR. LEONARDO, Correctional Officer, Green Correctional Facility; MR. B. JUNE, Correctional Officer, Greene Correctional Facility; MR. D. VINCENT, Correctional Officer, Greene Correctional Facility; MS. P. BUNCH, Correctional Officer, Greene Correctional Facility; MS. M. GONZALEZ, Correctional Officer, Greene Correctional Facility; MR. MURPHY, Correctional Officer, Greene Correctional Facility; MR. G. MILLER, Correctional Officer, Greene Correctional Facility; JANE DOE, Nurse, Administrative Office, Greene Correctional Facility; MS. SMITH, Correctional Doctor, Greene Correctional Facility; MS. M. REED, Correctional R.N., Greene Correctional Facility; MS. S. DIMICK, Correctional R.N., Greene Correctional Facility; MS. S. DERR, Correctional R.N., Greene Correctional Facility;

**JANE DOE, Mail Room Clerk, Greene Correctional Facility;
MS. A. HORNER, Correctional Officer, Greene Correctional
Facility; MR. MAHON, Correctional Officer, Greene
Correctional Facility; DOUG BOTSFORD; D. UHLER;
MARIO DOUYON DEAZEY; DR. ADAMS; NANCY SMITH;
ELIZABETH WHITE; GERALDINE WILSON; ROXANNE
LECLERC; TRUDY-LYNN CARON; INSPECTOR
GENERAL, DOCS; and IRRUSSO, Corrections Counselor,**

Defendants.

JULIO MELECIO,

Plaintiff,

v.

**9:10-CV-470
(FJS/RFT)
MEMBER CASE**

**GREENE CORRECTIONAL FACILITY BUSINESS OFFICE
CLERK JANE DOE; INMATE ACCOUNTS OFFICE CLERK
JANE DOE; INMATES GRIEVANCE OFFICE SUPERVISOR
JOHN DOE; DEPUTY OF SECURITY JOHN DOE;
SUPERINTENDENT JOHN DOE; MR. GLASSER; C.O.
VINCENT; COMMISSIONER OF CORRECTIONS;
INSPECTOR GENERAL; CORRECTIONAL COUNSELOR
IRUSSO; S. LUCAS; and MR. D. RAMIREZ,**

Defendants.

APPEARANCES

OF COUNSEL

**JULIO MELECIO
07-A-3977**
Auburn Correctional Facility
P.O. Box 618
Auburn, New York 13021
Plaintiff *pro se*¹

¹ According to the New York State Department of Corrections and Community
(continued...)

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**
The Capitol
Albany, New York 12224
Attorneys for Defendants

WILLIAM J. MCCARTHY, JR., AAG

SCULLIN, Senior Judge

ORDER

Plaintiff commenced two separate actions pursuant to 42 U.S.C. § 1983. *See Melecio v. Fischer*, 9:10-CV-289; *Melecio v. Greene Correctional Facility*, 9:10-CV-470. On October 1, 2010, Plaintiff moved to amend his complaint and to consolidate the two actions. *See* Dkt. No. 33. In a Memorandum-Decision and Order dated November 22, 2010, this Court found that the form, substance, and Defendants involved in the two actions were nearly identical and granted Plaintiff's motion to amend and consolidate the two actions with *Melecio v. Fischer*, 9:10-CV-289, designated as the lead case. *See* Dkt. No. 34 at 5-7. Furthermore, this Court directed the Clerk of the Court to file Plaintiff's proposed amended complaint as the consolidated complaint for both cases.

In his consolidated amended complaint, Plaintiff alleges that Defendants retaliated against him for filing grievances and violated his rights under the Eighth Amendment. *See* Dkt. No. 35, Consolidated Amended Complaint. Defendants moved to dismiss the consolidated amended complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See* Dkt. No. 46. Plaintiff did not file any papers in opposition to that motion.

¹(...continued)

Supervision's website, <http://nysdocslookup.doccs.ny.gov>, Plaintiff was released from custody on October 21, 2011. Although the Court reminded Plaintiff to advise the Court of his change of address upon release, he has not done so. *See* Text Order dated October 13, 2011.

On September 27, 2011, Magistrate Judge Treen issued a Report-Recommendation and Order, in which he recommended that the Court grant Defendants' motion and dismiss Plaintiff's consolidated amended complaint in its entirety. *See* Dkt. No. 55. Plaintiff did not file any objections to those recommendations.²

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting that review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Treen's September 27, 2011 Report-Recommendation and Order for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Treen's September 27, 2011 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendants' motion to dismiss is **GRANTED** and Plaintiff's consolidated amended complaint is **DISMISSED**; and the Court further

ORDERS that Plaintiff's claims against Defendant Horner and all unidentified Defendants are **DISMISSED**, pursuant to 28 U.S.C. § 1915A, for failure to state a claim; and the Court further

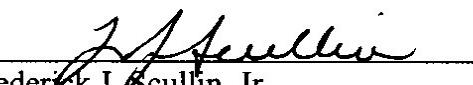
² The Court granted Plaintiff's request for a sixty-day extension of time, until December 8, 2011, in which to file any objections. *See* Text Order dated October 13, 2011.

ORDERS that the Clerk of the Court shall enter judgement in favor of Defendants and close both *Melecio v. Fischer*, 9:10-CV-289, and *Melecio v. Greene Correctional Facility*, 9:10-CV-470; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: January 11, 2012
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge